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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,843	01/22/2002	Craig William Fellenstein	RSW920010227US1	5014
7590 Andrew Calderon Greenblum & Bernstein P.L.C. 1950 Roland Clark Place Reston, VA 21091			EXAMINER NELSON, FREDA ANN	
			ART UNIT 3628	PAPER NUMBER
			MAIL DATE 06/05/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/053,843	Applicant(s) FELLENSTEIN ET AL.	
	Examiner Freda A. Nelson	Art Unit 3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The amendment received on March 15, 2007 is acknowledged and entered. No claims have been added. Claims 1-18 are currently pending.

Response to Amendment and Arguments

Applicant's arguments filed March 15, 2007 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to Applicant's arguments that the Examiner has failed to identify any language whatsoever in YAMAZAKI which even remotely discusses or discloses for each unit of a plurality of units of data processing services, determining a level of environmental complexity, a level of change, and a type of environment, much less, that for each unit of the plurality of units, assigning points to the unit responsive to its level of environmental complexity, level of change, and type of environment, as determined, and summing the assigned points to provide a count of points for the unit, the examiner respectfully disagrees. Yamazaki discloses that support includes diversified contents, such as software inquiry service, software install service, hardware on-site repair service, hardware maintenance and routine service, and hardware failure monitor

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service, and each computer vendor presents their unique support contents menus (paragraph [0002]). Yamazaki discloses that the points are the base on which the grade is set, and determined in accordance with a response to the content of the inquiry and if the response involves an activity of higher technique, higher points are set; and the user is graded based on a total of the points, namely, accumulated points (paragraph [0039]). Yamazaki further discloses that in terms of technical levels, the usage pattern varies from a fundamental inquiry from a user's lack of understanding of technology to a critical and highly difficult problem related to the basic operation of a computer system (paragraph 0006). Yamazaki discloses that the point conversion table 22 of the evaluating section 15 stores a fee per point for each grade (paragraph 0033); and an amount per point is stored for each grade and instead of setting an amount per point, amounts for corresponding points may be set directly in each grade (paragraph [0061], FIGS. 8 and 10).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Miller discloses calculating a price-per-point by using division in the algorithm and thus is reasonably pertinent to the particular problem with which the applicant is concerned.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamazaki (US PG Pub. 2002/0040334) in view of Miller (Patent Number 6,338,043).

As per claims 1, 8, and 13-18, Yamazaki discloses a method for determining a per-point price for data processing services using a computing device, comprising the steps of:

for each unit of a plurality of units of data processing services, determining a level of environmental complexity, a level of change, and a type of environment (paragraphs [0006],[0033],[0039]);

for each unit of the plurality of units, assigning points to the unit responsive to its level of environmental complexity, level of change, and type of environment, as determined, and summing the assigned points to provide a count of points for the unit (paragraph [0039],[0061], FIGS. 8 and 10).

summing the counts of points for all the units of the plurality of units to provide a total number of points for the data processing services (paragraph 0061, FIGS. 8 and 10).

Yamazaki does not disclose dividing a base line price for the data processing services by the total number of points to provide a per-point price; and one of:

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responding to a customer request by providing the per-point price for data processing services; and

specifying to a customer the per-point price for data processing services.

However, Miller discloses that media buyers often measure the cost effectiveness of buying a particular spot based on its cost-per-point (CPP) value wherein the CPP value of a spot associated with a given program is calculated by dividing the purchase price of the spot by the rating of that program; thus, if a given program has a Nielsen Media Research rating (point) of "4", and the station charges \$300 for a thirty second announcement (service) in the program, then the CPP for that spot is \$75 CPP (i.e., $\$300/4$) (col. 1, lines 49-64).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Yamazaki to include the feature of Miller in order provide the user with a per-point price.

As per claim 2, Yamazaki discloses that the point conversion table 22 of the evaluating section 15 stores a fee per point for each grade and here, the higher is the grade, the lower is the charged fee; and the grade conversion table 23 of the evaluating section 15 stores the service costs and corresponding grades and here, the higher the cost, the lower the grade becomes (paragraph 0033). Yamazaki further discloses that the points are the base on which the grade is set, and determined in accordance with a response to the content of the inquiry (paragraph 0039; FIGS. 1 and 3).

As per claim 3, Yamazaki discloses that in terms of technical levels, the usage pattern varies from a fundamental inquiry from a user's lack of understanding of technology to a critical and highly difficult problem related to the basic operation of a computer system (paragraph 0006).

Yamazaki does not disclose that the predetermined levels of environmental complexity include simple, medium, and complex.

However, it is old and well known in the computer art that levels of complexity in support services (data processing) include simple (easy), medium, and complex.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Yamazaki to include simple, medium, and complex technical levels in order to set a support fee based on the three levels in order to optimize profits.

As per claims 4-5, Yamazaki discloses that the user information registering unit 16 sets an initial grade in Step S104 and by giving consideration to a possible shifting (upgrade/downgrade) of the grade, a middle grade is set as the initial grade wherein ten grades are set in total in the present embodiment, and the initial grade is set at the fifth grade in the middle (paragraph 0044).

Yamazaki does not disclose that the predetermined levels of change include low, medium, and high.

However, it is old and well known in the computer art that levels of possible change in support services (data processing) include low, medium, and high, as well as,

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unlikely, and likely, and highly likely to change. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Yamazaki to include a low, medium, and high level of change in order to set a support fee based on the three levels of possible shifting of support.

As per claims 6-7, Yamazaki discloses a technology for giving a support to computer users such as on how to use computer hardware, software, and system resources (paragraph 0001). Yamazaki further discloses that conventionally, computer vendors have been providing extra-cost service for their computer users, especially, user companies; and the support includes diversified contents, such as software inquiry service, software install service, hardware on-site repair service, hardware maintenance and routine service, and hardware failure monitor service, and each computer vendor presents their unique support contents menus (paragraph 0002).

Yamazaki does not disclose that the predetermined types of environments include, support, development, and production.

However, it is old and well known in the computer art that there are various types of environments of data processing services, including support, development, and production. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Yamazaki to include different types of environments needing data processing services including, development and production in order to provide services for a variety of environments.

As per claims 9 and 11, Yamazaki discloses that in terms of technical levels, the usage pattern varies from a fundamental inquiry from a user's lack of understanding of technology to a critical and highly difficult problem related to the basic operation of a computer system (paragraph 0006). Yamazaki further discloses that the user information registering unit 16 sets an initial grade in Step S104 and by giving consideration to a possible shifting (upgrade/downgrade) of the grade, a middle grade is set as the initial grade wherein ten grades are set in total in the present embodiment, and the initial grade is set at the fifth grade in the middle (paragraph 0044). Yamazaki still further discloses a technology for giving a support to computer users such as on how to use computer hardware, software, and system resources (paragraph 0001).

Yamazaki does not disclose that the predetermined levels of environmental complexity include simple, medium, and complex. Yamazaki does not further disclose that the predetermined levels of change include low, medium, and high. Yamazaki does not still further disclose that the predetermined types of environments include, support, development, and production. However, it is old and well known in the computer art that levels of complexity in support services (data processing) include simple (easy), medium, and complex; it is old and well known in the computer art that levels of possible change in support services (data processing) include low, medium, and high, as well as, unlikely, and likely, and highly likely to change; and it is old and well known in the business/computer art that there are various types of environments (industries) in need of data processing services, including support, development, and production environments. Therefore, it would have been obvious to one of ordinary skill in the art

at the time the invention was made to modify the invention of Yamazaki to include simple, medium, and complex technical levels in order to set a support fee based on the three levels in order to optimize profits; to include a low, medium, and high level of change in order to set a support fee based on the three levels of possible shifting of support; and Yamazaki to include different types of environments needing data processing services including, development and production in order to provide services for a variety of environments.

As per claims 10 and 12, Yamazaki discloses that the points are the base on which the grade is set, and determined in accordance with a response to the content of the inquiry and if the response involves an activity of higher technique, higher points are set; and the user is graded based on a total of the points, namely, accumulated points (paragraph 0039; FIGS. 9 and 10). Yamazaki further discloses that in terms of technical levels, the usage pattern varies from a fundamental inquiry from a user's lack of understanding of technology to a critical and highly difficult problem related to the basic operation of a computer system (paragraph 0006). Yamazaki still further discloses that the point conversion table 22 of the evaluating section 15 stores a fee per point for each grade (paragraph 0033); and an amount per point is stored for each grade and instead of setting an amount per point, amounts for corresponding points may be set directly in each grade (paragraph 0061, FIGS. 8 and 10). Yamazaki still further discloses that the user information registering unit 16 sets an initial grade in Step S104 and by giving consideration to a possible shifting (upgrade/downgrade) of the grade, a middle grade is

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set as the initial grade wherein ten grades are set in total in the present embodiment, and the initial grade is set at the fifth grade in the middle (paragraph 0044).

Yamazaki is silent about multiplying together the count of points for the unit to be added and the per-point price; however, it is inherent that the step has been performed in order to for the system to provide an updated and/or total amount.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

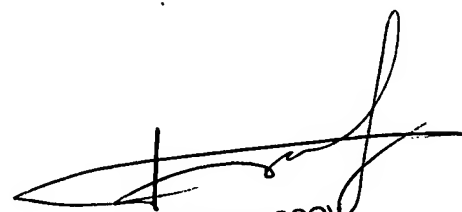
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Freda A. Nelson whose telephone number is (571) 272-7076. The examiner can normally be reached on Monday -Wednesday and Friday, 10:00 AM -6:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

FAN 05/29/2007



IGOR N. BORISSOV
PRIMARY EXAMINER